

BETWEEN: SOHE FAMILY
Applicant

AND: LAND TRIBUNAL MALO ISLAND
First Respondent

AND: AREA LAND TRIBUNAL
Second Respondent

AND: FAMILY JARAWARI
Third Respondent

AND: FAMILY VUIA VANUA
Fourth Respondent

AND: FAMILY MOLIWARI
Fifth Respondent

AND: FAMILY JARA
Sixth Respondent

AND: FAMILY MOLISINGI
Seventh Respondent

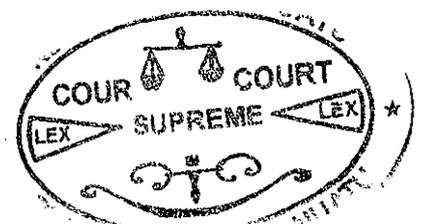
Coram: Mr. Justice Oliver A. Saksak

***Counsel: Marisan Vire for the Claimant/Applicant
Edward Nalyal for the Third Respondent
No appearances for First, Second, Fourth, Fifth, Sixth and Seventh Respondents***

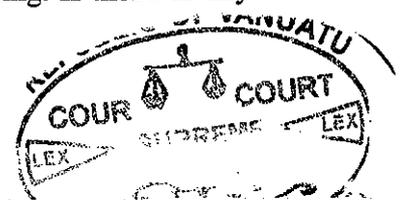
Date of Hearing: 14th May 2018

DECISION

1. I heard Counsel's arguments and submissions orally in relation to an application filed by the claimant seeking an extension of time to file a judicial review claim, seeking the review of the decision of the Malo Island Land Tribunal (MILT) dated 28th December 2005 and the Area Land Tribunal decision dated 2nd May 2005.
2. These two decisions are annexed as GT1 and GT 2 to the sworn statement of George Tavuti filed in support of the claim dated 3rd November 2017.



3. Mr Nalyal opposed the application for reasons that (a) it is about 12 years out of time (b) there is no jurisdiction to hear the claim and (c) there is no error in law to warrant a review.
4. The sworn statement of George Tavuti also annexed the decision of the Sumbe Navanua mo Sumbe bulutaki Navanua Joint Vilij Land Tribunal dated 30th October 2004 as GT3. That decision was registered.
5. For the Claimant's application to succeed he had to show-
 - a) Good and valid reasons for not applying within the 6 months rule required by Rule 17.5 (1)
 - b) He has been greatly disadvantaged by the decisions he seeks to review, and
 - c) He has been denied substantial justice.
6. The grounds in support of the application are stated in the application itself. The first is that lawyers who were instructed by the applicant did not do their job. This is not a good reason and the Court rejects it. The applicants contended that only the decision dated 10th October 2004 is the valid decision because it has been registered. In my considered view this is the decision that presents the real problem. I enquired from Counsel who the four (4) named persons are and whether any of them are the same persons named in the 28th December 2005 decision. Mrs Vire informed that Tavuti, Moliwari, JEU and Liuliumoli are the same and are the Sohe Family (the applicant herein). That being so it is a decision that excludes the interests of Family Jarawari, Family Vuina Vanua, Family Jara and Family Molisingi. The Raupepe Case [2000] VUCA 6 is the established authority that all persons having interests in land should and must be given the opportunity to participate in a proceeding. Secondly they say that substantial justice requires that leave be granted.
7. The 2004 decision is only in favour of the Sohe Family and is therefore in violation of the Raupepe principle. The 28th December 2005 on the other hand is consistent with the Raupepe principle and is therefore the preferred and accepted decision.
8. The Sohe Family and the Moliwari Family are included in the 28th December 2005 decision and the Court does not see the prejudice that they are facing. If there is any



prejudice, it is the 4 other families and John Jury who suffered when they were not part of the proceeding in 2004. Therefore the balance of convenience falls in favour of the respondents.

9. There are some other aspects in the 2004 decision which call its validity into question. For instance the dates are confusing. The date of meeting is given as 30th September 2004. The declaration date is earlier on 11th September 2004, showing this decision was made before the meeting or sitting of the Tribunal. The date of judgment is given as 30th October 2014. It was sent to the Lands Tribunal officer on 23rd September 2004 before the meeting. It was received on 12th October 2004, some 8 days before the Tribunal sat.

10. For those reasons therefore I am not satisfied that there are good and valid reasons to grant leave to the claimant to file a judicial review claim out of time.

11. The application is therefore dismissed with costs fixed as follows-

- a) Return Airfares for Mr Nalyal,
- b) Accommodation Costs,
- c) Transport/ Taxi fares, and
- d) 2 Hours of Court time.

DATED at Luganville this 14th day of May 2018

BY THE COURT

OLIVER.A.SAKSAK

Judge

